



SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA-2015-0018]

RIN 0960-AH85

Extension of the Workers' Compensation Offset from Age 65 to Full Retirement Age – Achieving a Better Life Experience (ABLE) Act.

AGENCY: Social Security Administration

ACTION: Final rule.

SUMMARY: This final rule adopts, with one additional change, the notice of proposed rulemaking (NPRM) that we published in the Federal Register on January 4, 2016. This final rule revises our rules by incorporating changes made by the ABLE Act to section 224(a) of the Social Security Act (Act). Under this final rule, the age at which disability insurance benefits (DIB) are no longer subject to reduction (offset) based on receipt of workers' compensation or public disability benefits (WC/PDB) changes from age 65 to the day the individual attains full retirement age.

DATES: This final rule is effective [INSERT DATE OF DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dean Dwight, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-7161. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: This final rule adopts, with one additional change discussed below, the NPRM that we published in the Federal Register on January 4, 2016.¹

Background

We explained our reasons for proposing the rule that we are now adopting as a final rule in the preamble to the NPRM (81 FR at 41), and we incorporate that discussion here.

In addition to the changes we proposed in the NPRM, we are making one additional change to our rules. The fourth sentence of current section 404.317 states, “Your monthly benefit amount may be reduced if you receive workers’ compensation or public disability payments before you become 65 years old as described in § 404.408.” For consistency with the other changes we are making to our rules, we are also revising the reference to “before you become 65 years old” in section 404.317 to “before you attain full retirement age.”

Public Comments

In the NPRM, we provided a 30-day comment period, which ended on February 3, 2016. We received one comment. The comment came from a member of the public.

¹ 81 FR 41 (2016) (<https://www.gpo.gov/fdsys/pkg/FR-2016-01-04/pdf/2015-33036.pdf>).

After carefully considering the comment, we are adopting our proposed rule (81 FR 41-42) as a final rule.

Comment: The one comment we received stated, “Not fair there are plenty who have worked very hard to retire perhaps when a certain group progresses then reconsider changing the policy.”

Response: We did not adopt the comment. The changes we are making are mandated by statute. We have no discretion to reconsider the policy in the absence of a statutory change.

REGULATORY PROCEDURES

Good Cause for Effective Date

We find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). For the reasons discussed above and in the preamble to the NPRM (81 FR at 41), we are making minor changes to our current rules to incorporate changes made by section 201 of the ABLE Act² to section 224(a) of the Act. The provision in the ABLE Act applies to any individual whose DIB payment is offset for WC/PDB and who attains age 65 on or after December 19, 2015.³ Because the

² Public Law 113–295, Division B, § 201, 128 Stat. 4010, 4064.

³ Id., § 201(b). Section 201(b) specifies that the amendment to section 224(a) of the Act “shall apply with respect to any individual who attains 65 years of age on or after the date that is 12 months after the date

changes we are making in this final rule only reflect a statutory change that is already in effect, we find that it is unnecessary to delay the effective date of our final rule.

Executive Order 12866 as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB did not review the final rule.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it applies to individuals only. Thus, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

of the enactment of this Act.” Congress enacted the ABLE on December 19, 2014. Id. Consequently, the statutory amendment applies to an individual who attains age 65 on or after December 19, 2015. Id.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Government employees; Old-age, Survivors and Disability Insurance; Reporting and recordkeeping requirements; Social security.

Dated: March 25, 2016.

Carolyn W. Colvin,
Acting Commissioner of Social Security.

For the reasons set forth in the preamble, we amend subparts D and E of part 404 of title 20 of the Code of Federal Regulations as set forth below:

PART 404— FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE
(1950-).

Subpart D – [Amended]

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)-(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)-(e), and 902(a)(5)).

2. Amend § 404.317 by revising the fourth sentence to read as follows:

§404.317 How is the amount of my disability benefit calculated?

* * * Your monthly benefit amount may be reduced if you receive workers' compensation or public disability payments before you attain full retirement age (as defined in § 404.409) (see § 404.408). * * *

Subpart E – [Amended]

3. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 222(c), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 422(c), 423(e), 424a, 425, 902(a)(5), and 1320a-8a); 48 U.S.C. 1801.

4. In § 404.401, revise paragraph (a)(4) to read as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

* * * * *

(a) * * *

(4) An individual under full retirement age (see § 404.409) is concurrently entitled to disability insurance benefits and to certain public disability benefits (see § 404.408);

* * * * *

5. In § 404.408, revise paragraph (a)(2)(ii) to read as follows:

§ 404.408 Reduction of benefits based on disability on account of receipt of certain other disability benefits provided under Federal, State, or local laws or plans.

* * * * *

(a) * * *

(2) * * *

(ii) The individual has not attained full retirement age as defined in § 404.409.

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